

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21610

Docket Number CL-21067

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7742, that:

(1) Carrier violated the Agreement between the parties when it failed to pay Mr. S. M. Ford 8 hours' pay at the rate of position of Steno-Clerk for September 8, 1971 and each subsequent work-day, Monday thru Friday, to and including October 20, 1971, and

(2) Carrier shall pay Claimant Ford amount shown in (1) above.

OPINION OF BOARD: Having been displaced from his Yard Clerk position at Indianapolis, Indiana, Claimant Ford exercised his seniority on a Steno-Clerk position, which he occupied effective September 3, 1971. On September 7, 1971, Trainmaster B. M. Thomas notified claimant by letter that he was being disqualified from this position, effective at the end of his tour of duty on that date. On September 8, 1971 a letter from Local Chairman L. H. Tackett requested "a hearing to show reason for disqualification" of claimant.

Rule 32(c) provides in pertinent part that removal from a position due to disqualification "shall be accomplished by written notice to the employe and hearing and investigation shall be held, if requested, within 5 days from date of notice and written decision shall be rendered within 10 days." It will be observed that the Rule specifies written notice of disqualification and written decision following a hearing and investigation if the latter are requested, but the Rule does not require that such request be reduced to writing, nor does it mandate that the hearing and investigation be scheduled in writing. The Local Chairman filed written request for a hearing although the Rule did not require him to do so. Had the local Carrier officials followed a similar course in scheduling a hearing, this dispute may not have arisen.

The difference between the parties is confined to the Rule 32(c) procedure. The Organization contends no hearing was held, claimant's procedural rights were therefore violated, and the claim should be sustained for the period of September 8, 1971 through October 20, 1971. On October 21, 1971 an employee senior to claimant displaced onto the involved Steno-Clerk position.

There is a conflict in the facts following the Local Chairman's hand delivery of the request for hearing. The Local Chairman says the Trainmaster stated his schedule for Thursday, September 9, 1971, did not permit a hearing that day, and at the Trainmaster's request "it was agreed that the hearing would be held at a time and date mutually acceptable to both of us." (Record p. 3) The Trainmaster says a hearing was scheduled for 3:15 P.M. September 9, but was postponed to 10:00 A.M. September 10 at the Local Chairman's request.

In any event, the Local Chairman acknowledges being advised that Friday morning that a hearing was scheduled. Carrier states its Trainmaster's Chief Clerk informed Claimant Ford by telephone Thursday afternoon that a hearing concerning his disqualification was scheduled for 10:00 A.M., Friday, September 10.

It is established that neither claimant nor any of his representatives appeared at the hearing. The Clerks contend that if a hearing was held, the absence of claimant and his representative was not a bar, and in fact the Rule requires that a hearing be held if requested. We agree with Carrier's stated view that since neither claimant nor his representative appeared at the hearing, there was no reason to hold it.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.